

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application. No:	10/772,518	§	Examiner:	Chen, Qing
Filed:	February 5, 2004	§	Group/Art Unit:	2191
Inventor(s):		§	Atty. Dkt. No:	5150-38605
	Robert E. Dye, Darshan Shah, Steve	§		
	Rogers, Greg Richardson, Dean A.	§		
	Luick	§		
Title:	GRAPHICAL	§		
	PROGRAMMING SYSTEM	§		
	WITH BLOCK DIAGRAM	§		
	EXECUTION AND	§		
	DISTRIBUTED USER	§		
	INTERFACE DISPLAY	§		

REQUEST FOR PRE-APPEAL BRIEF REVIEW

ATTN: BOX AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request. This request is being filed with a Notice of Appeal. The review is requested for the reason(s) stated below.

Applicant is in receipt of the Advisory Action mailed August 11, 2009. Claims 59-104 are pending in the present case. Reconsideration of the present case is earnestly requested in light of the following remarks. Please note that for brevity, only the primary arguments directed to the Advisory Action's arguments regarding the independent claims are presented, and that additional arguments, e.g., directed to the subject matter of the dependent claims, will be presented if and when the case proceeds to Appeal.

Claims 59-104 were rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 5,801,689 ("Huntsman), in view of US Pat. No. 4,901,221 ("Kodosky"). Applicant respectfully traverses the rejection.

Nowhere does the cited art disclose **send information regarding the block diagram of the graphical program over the network to the client computer system after establishing the network connection with the client computer system, wherein the information regarding the block diagram**

is useable by the client computer system to display the block diagram on a client computer system, as recited in claim 59.

The Advisory Action admits that “Huntsman does not disclose a graphical program including a block diagram”, but then argues that a MS-Windows program or any GUI-based program is a “graphical program”, and that “GUI-based operating systems and GUI-based programs” are “pictorial rather than text based”, apparently implying that simply having a GUI makes any program a “graphical program”. **This is incorrect**, and contrary to Applicant’s definition of a graphical program presented in the claims and specification. It is improper for the Examiner to redefine key claim terms in an attempt to blur the distinctions between text-based programs, such as Huntsman’s MS-Windows programs, and Applicant’s graphical programs. Applicant respectfully submits that one of skill in the programming arts readily understands that text-based programs are written in text-based programming languages, e.g., FORTRAN, PASCAL, C, C++, etc., i.e., have textual source code, and may or may not include GUIs, whereas graphical programs have *graphical source code*, i.e., a block diagram comprising interconnected graphical program icons or nodes. For example, the cited MS-Windows and Windows Explorer are textual programs, even though they implement GUIs, and the cited folder and file icons are GUI elements, not graphical source code of the programs, and certainly not interconnected icons of a block diagram of a graphical program. In other words, the fact that a program’s GUI includes “icons, panels, and windows” does not make the program a “graphical program”. Thus, these cited icons and other GUI elements are not germane to these claimed features.

The Advisory Action further argues that “the GIF file is a color image of the executing GUI-based program”, and that “the GIF file represents the GUI features and the graphical program features of the executing GUI-based program”. **This is incorrect**. The GIF file is directed at the GUI, not the program (source code). As the first paragraph of the Detailed Description makes clear, Huntsman’s remote control system has two main components: a GUI-screen-to-hypertext convertor, and a hypertext-to-GUI-response means, both directed to translating a textual program’s GUI to or from hypertext, e.g., translating a Windows (text-based) program’s GUI screen to HTML and GIF data files, and vice versa, respectively, and thus, the GIF file only represents a text-based program’s GUI, and is not germane to the claimed graphical program block diagram.

As noted previously, the Examiner cites Huntsman’s sending of GUI information (“the GIF image file containing the screen image of the GUI on the first computer”, col.9:31-50) with respect to both sending information describing *a user interface* of the graphical program over a network to the client computer system, and sending information regarding *the block diagram* of the graphical program over the network to the client computer system. This is incorrect, and improper, as it ignores key distinctions of elements recited separately in the claim. Per the citation, Huntsman’s GIF file, as referenced by the

REMOTE.HTM, presents the screen image of the client (first) computer, and REMOTE.HTM contains appropriate HTML references to the GIF file so that the GIF file will be displayed as a clickable image, and thus appears to be a GUI. As one of skill in the programming arts would readily understand, such a GUI is not a graphical program, nor, more specifically, a block diagram, as clearly defined in claim 59. Moreover, Applicant notes that Huntsman's GIF file cannot be used to display the source code of Huntsman's programs, whereas the claimed information regarding the block diagram of the graphical program is useable by the client computer system to display the block diagram (which is the source code of the graphical program) on the client computer system.

In other words, Huntsman's sending of GUI information cannot teach both sending information regarding the GUI of the graphical program, *and* sending information regarding the *block diagram* of the graphical program.

Thus, Huntsman's transmittal of information regarding a GUI does not teach or suggest sending information regarding a graphical program block diagram, which is graphical source code of the program, useable to display the block diagram on the client system. Furthermore, Huntsman's programs are *not* graphical programs, contrary to the Examiner's assertions, and Huntsman only discloses sending information regarding a text-based program's GUI. Nor does Kodosky, which discloses graphical programs (both block diagram and GUI), disclose sending information regarding a block diagram to a client system. Thus, neither reference teaches this feature, and so Huntsman's sending of GUI information and Kodosky's graphical program in combination do not, and cannot, produce this limitation of claim 59.

Applicant further notes that the Advisory Action's assertion that it would be obvious "to modify Huntsman's MS-Windows program as a block diagram of a graphical program of a virtual instrument in order to allow the block diagram of the graphical program of the virtual instrument to be remotely controlled by a user so that the user can have access to the block diagram information executing on another computer", is not a proper motivation to combine. First, note that "the block diagram information" of claim 59 is sent to the client (remote) system to *display* the block diagram, and does not execute on the local computer, contrary to the Advisory Action. Nor is Huntsman's system for remote control of textual-based programs changed substantially by modifying the programs to be graphical programs, since in Huntsman's system (even in combination with Kodosky) it is only the GUI information that is transmitted. The Examiner has attempted to modify Huntsman by simply adding the novel feature of claim 59 "send information regarding the block diagram of the graphical program over the network to the client computer system after establishing the network connection with the client computer system, wherein the information regarding the block diagram is useable by the client computer system to display the block diagram on a client computer system"—which is neither taught nor suggested

by the Huntsman or Kodosky, which is improper. Moreover, neither reference even hints at the desirability of sending block diagram information to a remote computer for display, and so the Examiner's inclusion of this feature is not only unsupported in the cited art, but is clearly based on hindsight analysis, which is also improper. Thus, Huntsman and Kodosky are not properly combinable to make a prima facie case of obviousness.

Moreover, even were Huntsman and Kodosky properly combinable, which Applicant argues they are not, the resulting combination would still not produce Applicant's invention as expressed in claim 59, as discussed in detail above. In other words, Huntsman and Kodosky, if properly combined, teach sending GUI information for a graphical program to a computer for remote control of the program, but do not, and cannot, provide the limitation of sending block diagram information to the client computer for display.

Thus, Huntsman and Kodosky, taken singly or in combination, fail to teach or suggest this claimed feature of claim 59.

Thus, for at least the reasons presented above, the cited art, taken singly or in combination, fails to teach or suggest all the features and limitations of claim 59, and so claim 59, and those claims respectively dependent therefrom, are patentably distinct and non-obvious over the cited art, and are thus allowable.

Independent claims 73 and 81 include similar limitations as claim 59, and so the above arguments apply with equal force to these claims. Thus, for at least the reasons presented above, the cited art fails to teach or suggest all the features and limitations of claims 73 and 81, and so these claims and those claims respectively dependent therefrom, are patentably distinct and non-obvious over the cited art, and are thus allowable.

Claim 82 is similar to independent claim 59, but is directed to client side operations. Arguments similar to those presented above apply to this claim.

Independent claims 96 and 104 include similar limitations as claim 59, and so the above arguments apply with equal force to these claims.

Thus, for at least the reasons presented above, the cited art fails to teach or suggest all the features and limitations of claims 82, 96, and 104, and so these claims, and those claims respectively dependent therefrom, are patentably distinct and non-obvious over the cited art, and are thus allowable.

Removal of the 103 rejection of claims 59-104 is respectfully requested.

In light of the foregoing remarks, Applicant submits the application is now in condition for allowance, and an early notice to that effect is requested. If any extensions of time (under 37 C.F.R. § 1.136) are necessary to prevent the above referenced application(s) from becoming abandoned,

Applicant(s) hereby petition for such extensions. If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert & Goetzel PC Deposit Account No. 50-1505/5150-38605/JCH.

Also enclosed herewith is a Notice of Appeal.

Respectfully submitted,

/Jeffrey C. Hood/

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Date: 2009-08-24 JCH/MSW